

## **REGULAR SESSION-BOARD OF QUAY COUNTY COMMISSIONERS**

**October 12, 2010**

**1:30 p.m.**

BE IT REMEMBERED THE HONORABLE BOARD OF QUAY COUNTY COMMISSIONERS met in regular session the 12<sup>th</sup> day of October, 2010 at 1:30 p.m. in the Commissioners' Room of the Quay County Courthouse, Tucumcari, New Mexico for the purpose of taking care of any business that may come before them.

### **PRESENT & PRESIDING:**

Franklin McCasland, Chairman  
Bill Curry, Member  
Robert Lopez, Member  
Ellen L. White, County Clerk  
Richard Primrose, County Manager

### **OTHERS PRESENT:**

Larry Moore, Quay County Road Superintendent  
Cheryl Simpson, Quay County Manager's Office  
Tim Rose, Assistant District Attorney  
Ron Jones, NM Wildlife Specialist  
Bruce Hamon, Ute Lake Ranch Filing No. 2 Property Owner  
Muriel Agnelli, Ute Lake Ranch Filing No. 2 Property Owner  
Warren Frost, 12 Shores Subdivision Attorney  
Tony Elebario, Quay County Detention Center  
Michael Martinez  
Harold Daniels, Property Owner  
Ron Scarpa, Ute Lake Ranch  
Barry Freedman, Ute Lake Ranch  
Robert McAllister, Ute Lake Ranch Attorney  
Blane Scenters, Ute Lake Ranch  
Larry Fowlkes  
Charles Benton  
Thomas Garcia, Quay County Sun  
Cody James, Resident  
Louis F. James, Property Owner  
Brad L. Bryant, District 3 Commissioner Elect  
Chris Bremner, 12 Shores  
Kent Terry, Interstate Streams Commission

Chairman Franklin McCasland called the meeting to order. Kent Terry led the Pledge of Allegiance.

Chairman Franklin McCasland called the Public Hearing portion of the meeting to order for the purpose of discussing closure of 2.5 miles on Quay Road K from the 8270 block to the 8520 block and to open 1.0 miles of Quay Road K at the 600 block. Quay County Clerk, Ellen White

swore in the following individuals so they could provide testimony during the Public Hearing: Harold Daniels and Louis James.

Harold Daniels stated he was the requestor of the closure and stated he believed the closure would benefit all residents in that area. There are six cattle guards in that short distant and the road is very difficult to maintain with four of the cattle guards put in by Daniels.

Louis James stated he used that road for access to his property and would protest the closure unless recorded easements can be obtained securing him access now and in the future to property he owns.

Chairman McCasland instructed Daniels and James to work out the details of the easements needed and be present at the second public hearing scheduled for October 25, 2010 with the easements prepared and ready for recording prior to the road closure.

Commissioner Curry asked if the easement required is for the entire part of the road to be closed or only a portion. Mr. James stated it was only a portion. Commissioner Curry reminded those in attendance that once the road is closed, the maintenance from the County stopped.

With no further testimonies Chairman McCasland closed the Public Hearing portion of the meeting.

A MOTION was made by Robert Lopez, SECONDED by Bill Curry to approve the minutes from the September 28, 2010 regular commission meeting. MOTION carried with all members voting "aye".

A MOTION was made by Bill Curry, SECONDED by Robert Lopez to approve the Agenda as presented. MOTION carried with all members voting "aye".

Public Comments: There were none.

Ron Jones, NM Wildlife Specialist presented the update on the current situation with feral hogs and reported the number of encounters are down considerably. Jones also presented the Work Plan Cooperative Wildlife Services Program Agreement for approval. A MOTION was made by Bill Curry, SECONDED by Robert Lopez to approve said Agreement. MOTION carried with all members voting "aye". A copy of said Agreement is attached and made a part of these minutes.

Bruce Hamon, Ute Lake Ranch Filing No. 2 lot owner stated he was aware of Item No. 3 on the agenda, the request for approval of 12 Shores Re-plat and requested the record reflect he would like to reserve his rights under the original plat filed in Ute Lake Ranch, Filing No. 2.

Warren Frost, Attorney for 12 Shores re-plat and CARMA Developers requested approval of the replat of twelve lots being divided into twenty-four lots for the purpose of constructing duplex properties to expand the market during the economic crunch the country is facing and provide affordable alternatives at the Subdivision. Preliminary plans were presented to the County Manager as well as a letter from Jason Garside, providing information regarding the water system, drainage and sewer to support the re-plat. Frost stated Chris Bremner is present and is the responsible person with CARMA for the re-plat. Bremner stated the only comment he would like to make is the area for the swimming pool was left off the plans but will be included in later

drawings. The Subdivision re-plat, as well as the Amended Disclosure Statements and fee for Re-subdividing will be filed for record with the County Clerk. A MOTION was made by Bill Curry, SECONDED by Robert Lopez to approve the request for 12 Shores re-plat.

Tony Elebario, Quay County Detention Center Administrator presented the quarterly report for the time period 7/01/2010 through 9/30/2010. A copy is attached and made a part of these minutes.

Larry Moore, Quay County Road Superintendent presented the following report:

1. Prior to the road closure and road opening discussed in the Public Hearing, Moore reported an additional easement will have to be obtained for the new road opening in the 600 block of Quay Road K. Road viewers will make recommendations as well. Chairman McCasland stated if all the easements are not in place by the October 25, 2010 meeting, the Public Hearing and any action should be postponed to a future meeting.
2. The crews have been working on the road up to Tucumcari Mountain. The road is in very bad shape and is in need of a lot of material.

Nancy English, Attorney for Barry Freedman joined the meeting. Time noted 2:00 p.m.

3. Culverts that have been requested are being set at various locations.
4. The signage for Maple Street for traffic control have been ordered and received and placement of those signs will begin this week. The speed bumps are being removed.
5. Moore is talking to Mike Barnett of K. Barnett and Gene Smith to work out details regarding the hauling of the purchased materials near Jordan and prioritizing where the material will be utilized.

Chairman McCasland stated he received compliments and thank-you's from residents regarding the recent work on Quay Road AI and 11 mile road.

County Manager Richard Primrose presented the following Manager's Report:

1. Requested approval of Resolution No. 10; authorization of Budgetary Increase to Forrest Fire District (411-12). A MOTION was made by Robert Lopez SECONDED by Bill Curry to approve said Resolution as presented. MOTION carried with all members voting "aye". A copy of said Resolution is attached and made a part of these minutes.
2. Primrose provided the following summary of the investigation of Ute Lake Ranch Filing #1 as a result of the June 11, 2010 County Commission meeting. Lot owners at Ute Lake Ranch Filing No. 1 came to the Quay County Commission meeting requesting assistance because they did not think the developer was complying with the subdivision requirements. The Commissioners asked the owners to submit a written complaint and 18 complaints were received. Section 11.2 of the County Subdivision Ordinance, states: Investigation of Alleged Violations requires the County Manager to investigate the complaint and make a written recommendation to the Board of County Commissioners.

With the help of legal counsel the complaints were reviewed based on Quay County Ordinance 35 and all the documents in the Manager's office and those filed at the Quay County Clerk's office pertaining to Ute Lake Ranch Filing No. 1. These documents

started with the preliminary plat application submitted on July 17, 2003, then minutes, plans, covenants, declarations, maps, and disclosures involving Filing No. 1.

On July 7, 2010 Primrose sent Ute Lake Ranch c/o Mr. Freedman and Mr. Hamon a letter requesting fourteen items needed for additional information to complete the investigation. On August 5, 2010 Mr. Freedman and Nancy English come to the Managers office with a box containing responses to the request and a letter from Robert T. McAllister summarizing the information and responses.

With the help of legal counsel, Primrose reviewed the responses and most of the information was a duplication of the documents which had already been reviewed and did not answer some critical questions.

On September 30<sup>th</sup>, 2010 Primrose sent a letter to Ute Lake Ranch c/o Barry Freedman, Bruce Hamon and Winston Wall, partners in Ute Lake Ranch with the findings of this investigation and the County Manager's recommendations to the Quay County Commission as noted below:

1. Quay County Subdivision Ordinance 5.3.5 Disclosure Statement states "It is unlawful to sell, lease, or otherwise convey land in a subdivision until the required disclosure statement has been filed with the Quay County Clerk, the Board of County Commissioners, and the New Mexico Attorney General's Office; and until the prospective purchaser, lessee or other person acquiring an interest in the subdivided land has been given a copy of the disclosure statement." The disclosure statement was not filed until February 2, 2007.
2. The fax sent to Jason Garside from Fred Curnutt with Engineers Inc. on May 5, 2005 provided by Ute Lake Ranch is a water analysis report of water collected on November 22, 2002 at Mine Canyon Road. The water analysis from Hall Environmental Laboratory clearly indicates several elements are over minimum limits and must be included in the disclosure statement and the water was not fit for human consumption.
3. I also find that the Ute lake Ranch represented in its 2007 disclosure statement that telephone service would be provided to each individual lot and as of today this has not been provide.

Primrose stated, based on the findings during the investigation it is his recommendation the Board of County Commissioners suspend the approved plat.

Chairman McCasland stated Primrose had provided all the information from the investigation and noted this investigation was a result of the individual lot owner's complaints. Subdivision Regulations have not been followed according to County Ordinance leaving the Commissioners with two choices, either suspend or revoke the Subdivision.

Barry Freedman, Ute Lake Ranch Filing No. 1 developer spoke from the audience requesting permission to address the Commission and respond. Chairman McCasland stated under normal circumstances persons wanting to respond to items on the Agenda should asked to be included on the Agenda prior to the meeting, but McCasland would allow the courtesy for Freedman and his attorney Robert McAllister to speak.

McAllister stated he had submitted documents today that rebut point by point Primrose's findings. Since September 30, 2010 McAllister said he had conducted the research and findings to respond. McAllister asked that the response be reviewed by Primrose prior to the Commission making a decision today. McAllister stated Primrose had not had time to review the document as it was handed to him just prior to the meeting. McAllister stated that he would like to get to the bottom line regarding Ute Lake Ranch Filing No. 1. Suspension of the plat would perhaps endanger not only the value of over fifty million dollars worth of improvements to Quay County, but also the value of the homes and lots would be endangered. The impact would hinder any future developments at Ute Lake Ranch.

Based upon the findings of Primrose, McAllister believes it would be inappropriate to suspend or revoke the subdivision as it's his opinion that Primrose's recommendation is based off of personal nonobjective opinion and not facts. McAllister stated a lot of information Primrose based his findings off of were supplied by Bruce Hamon, whom is in current litigation with Freedman. McAllister said he was not present to engage in a trial, which is what he does for a living or to attack Mr. Primrose.

Ute Lake Ranch and Barry Freedman, has spent a great deal of money acquiring water rights and the ability to provide water to Ute Lake Ranch Filing No. 1. He made arrangements with the suppliers of water in the area and in addition he himself individually built a water line from Logan to the development in question today. Primrose's findings did not mention that 38 of the lots have a community water system. They have a pipeline that supplies treated water for human consumption. The report made by Primrose stated all lots are dependent upon well water. It is true that the contracts executed by the lot owners with Ute Lake Ranch indicate it is the responsibility of the lot owners to provide their own water. Despite that, Ute Lake Ranch has a water line available and for the last year, Freedman has personally attempted to complete the line so that every single lot owner has the ability, when and if they choose to use the water line.

McAllister stated there are two things that have prevented that from happening to date. The termination of the Ute Lake Ranch Public Improvement District No. 1, in which Chairman McCasland and Bruce Hamon voted in favor of dissolving while Freedman objected. The purpose of the PID was to ensure there was water for the owners. McAllister stated that PID needs to be reinstated or a new one needs to be formed. The second item that is keeping Mr. Freedman from completing the water line to all the lots is the fact that he is a minority share holder in the company, Bruce Hamon has filed some spurious and false liens on the property. McAllister stated he used the term spurious because on July 3, 2010 before Judge Albert Mitchell in District Court, Mitchell turned to Bruce Hamon and pointed his finger at him telling him he was out of line with the liens. At the conclusion of the hearing Judge Mitchell issued an order directing Mr. Hamon to remove the liens affecting the lot owners and home owners which affected the consumers. McAllister stated that Hamon, to date has not removed those liens and complied with the order leaving Freedman with a dilemma.

McAllister said Freedman has been in negotiations with a local contractor who is prepared to complete and finish the water line which has been in negotiations for over a year with the engineering work already completed. The contractor will proceed with the line, at no additional cost at the moment to the lot owners, the cost being only to Ute Lake Ranch, as soon as the liens are removed.

McAllister asked the County to decline the request of the County Manager and allow the development to move forward and requests the cooperation of the County with future development by working with Ute Lake Ranch by reforming or reinstating the PID and if anything could be done with Mr. Hamon by encouraging him to remove the liens so construction to complete the water line can begin. McAllister stated he could go through Primrose's findings and contest them point by point however he chooses not to because if a water line is supplied it would ratify the problems. McAllister stated Freedman has already spent millions of dollars to get the water line where it is at today and wants to get it finished. McAllister reiterated it was highly unlikely for any contractor to engage in work to complete the water line with the spurious liens in place.

Barry Freedman, Ute Lake Ranch developer stated he has been invested for the past 13 years to Quay County and the development. He stated he has been the single greatest motivator of economic recovery in the County. He has given his life and life savings and time to develop this area. Up until this summer, every communication with the County has been positive and complimentary of his work. Without the knowledge of Freedman, lot owners complained and caused concern to the County Commissioners. Prior to the complaints of the lot owners, the water line was in and serviced to 38 lots. However economic situations, budgets not withstanding and other issues within the company have prevented the completion of the water line without the PID being in place. The PID would allow the development to recover costs or borrow money to finish the water line. Without the PID, there is no vehicle to allow for a taxing agency per lot so that some of the principal and interest can be recovered. Freedman asked the Commissioners to work with them and not takes sides over a matter being resolved in civil litigation. Freedman stated he has done everything he ever said he would do and he would like to be given the opportunity to cure the issues that he was not aware of. That being the complaints of the lot owners. He said even before the issue of the 18 lot owners complaints, the water line was in and the process was begun and not because they had to but because it was the right thing to do and it was done at his own expense.

Chairman McCasland replied the Quay County Commission has always supported this development which has helped the economy and community. McCasland said it was inappropriate and unprofessional for McAllister and Freedman to show up the courthouse moments before a meeting and deliver a response to the County Manager and expect him to review it prior to the meeting. Primrose requested documentation for aid in the investigation and allowed ample time for a response. Instead he received documents that were already in place and Mr. Primrose's requests were ignored. McCasland stated it's amazing the room is full of people today now that the Commission is forced to take action. If the information that was requested had been received, the Commissioners would not be in the position they are today.

McCasland stated he had a serious problem with the contracts initiated between the purchasers of lots at Ute Lake Ranch and the developers. It was always the intent being disclosed to McCasland and the other Commissioners, that there would be potable water supplied to those lots. The Commission approved the final subdivision by overruling the State Engineers negative opinion regarding water quality and quantity. A contract is in place between Quay County and the Ute Lake Ranch to supply treated water to the development. McCasland stated he was surprised when the lot owners told the Board of Commissioners the contracts did not provide for potable water. Water contracts were secured and the countless meetings were attended including Interstate Streams and Ute Water Commission. McCasland said he and the other Commissioners have bent over backwards securing those contracts.

Chairman McCasland said a Public Improvement District is to allow the developer of a subdivision to recover costs after investments are made regarding infrastructure and the improvements are in place. It is not a vehicle to tax the lot owners prior to the improvements being developed. CARMA has established their PID and the county supports it. However, it's the Commissioner's objective to protect the residents of the County and when Ute Lake Ranch Filing No. 1 supplies the development with the improvements, the Commissioners will support approving of the PID for Ute Lake Ranch Filing No. 1. McCasland said he will keep his word, if the developers put in the infrastructure, he will support the PID.

Freedman asked to clarify some issues stating initially the Public Improvement Districts for phase 1 and 2 were inclusive. McCasland stated that was not correct, PID 1 was approved in 2004 and the PID for phase 2 was not approved until later. Freedman said yes, but the map included the plans for future development. McCasland said, the water lease was made in 2005 for potable water to be made available to those lots, and Freedman agreed and said he will continue to do that as there is enough water to service over 100 lots with an additional contract with CARMA to put in the intake structure. Freedman said there was never any intention or was there withheld information with regards to the property owners. Each well should have its own chemistry and it would be inaccurate to say every well in the development would not have good water. Freedman said the water line is being constructed, but economic issues have affected its completion. The PID is not needed to be in place to tax people so much as it is needed to get the lenders insured that they have the right to collect their money if the developers go away and have money borrowed. McCasland said the development would be collecting taxes from the property owners without the infrastructure being established.

McAllister interjected by saying that was not the intent stating the bottom line is that Mr. Primrose was not ignored. Thousands of hours were spent preparing a response. Primrose wrote back regarding well water and there was not one mention about establishing a water line or system for the development. McAllister said debating the water line is pointless. He said the water line is in place and will be extended to every single one of the lots as originally planned and budgeted when they have a legal entity in place, being a PID and the liens are removed allowing construction thereof. McAllister said the PID needs to be in place to establish what it's going to cost the homeowner for a tap fee and what if any tax will be applied. As well, the PID needs to be in place in advance to allow the developer to secure a lender and supply the plan and information so the line can be completed. McAllister said it's not a big problem, but legally they cannot proceed with the spurious liens in place or the lack of a PID. McAllister said he wished to get past the issues with Mr. Primrose's findings and proceed with a community water system and complete the line. McAllister said if a new PID was not formed with the old members in place a new one with new members would be formed and the project would move forward. McAllister said there is no reason to debate the past.

Commissioner Curry said the past is what has brought them here today. Long before the whole issue today, lot owners were purchasing lots and Mr. Freedman was promising infrastructure to be put in. Curry asked why it has taken this type of board action and investigation instead of the issue of putting in the required infrastructure not the main focus. McAllister said the reason is the PID was dissolved. Commissioner Lopez asked how long the PID was in place prior to being dissolved as no improvements were made during that time. McAllister said 7 years and Chairman McCasland said it was approved by the County in 2004. Commissioner Curry said he wanted an answer from Mr. Freedman. Freedman said they were totally unaware of any issues

until the first 2 wells were drilled. Under the plans and contracts with the purchasers, they were responsible for their own wells regardless of the condition of the water as long as there was water. As Freedman became aware, action was taken. In 2007 the water line construction began. Corporate issues and economic issues became a problem. The construction was stopped to resolve internal issues and the cash flow ceased. It was not the intent to not complete the line. Freedman said there are two homes occupied at Ute Lake Ranch which are serviced by the water line. Freedman said anyone else who needs water will also be provided water. There is one additional home that has been built and not serviced because it is owned by a company that owes Freedman a ton of money and that issue has not been resolved. There is not one thing that was ever said would be done that has not been done. Some items are not complete but that is a result of the economy. Commissioner Curry said he appreciated Freedman's response but still did not understand why the property owners brought this issue forward to the County if everything was being done properly at the subdivision.

McAllister stated there are four buildings out there and they all have water, if anyone else builds at Ute Lake Ranch, they will have water. The fact is that the line is in all the way from Logan to the development and they will extend the line to the homes as the lot owner requests them and the owners will be allowed to tap into the line. McAllister said the problem is they cannot sell homes or lots due to pending litigation and liens that are in place. In the meantime, if someone builds in the development, and they want water they will be given water be it piped water, city water or community water. The water line being completed enhances the ability of the developers so they want to see it move forward. Mr. Freedman has spent millions of dollars getting the water line where it is and will finish the water line one way or the other, stated McAllister.

McAllister said he understands the frustration of the lot owners however it's his understanding that most of those who complained are on the verge of foreclosure or have economic reasons leading them to demand for rescission. The majority of the lot owners have not complained, but the majority of the lot owners not complaining include Mr. Freedman and those affiliated with him.

McAllister said he and Mr. Primrose could debate for hours regarding items that need to be recorded or corrected. However if there were deficiencies brought to Mr. Freedman's attention they would have been addressed. The response to Primrose took a month to prepare and was not dumped on Primrose today as Chairman McCasland stated. McCasland said he read the responses previously submitted to Primrose not including today's information and the items in question were not answered. McAllister responded by saying Primrose should have asked for more information instead of sending the letter stating that it was his opinion to suspend the subdivision. McAllister said he did not believe that was appropriate and in anyone's best interest and he responded to that. McAllister said the investigation and responses were the past and he requested the Commissioners support to move the project forward.

Chairman McCasland asked Tim Rose, legal counsel for the County if he had anything to add and he did not.

Chairman McCasland requested a ten minute break. Time noted 2:45 p.m.

Return to regular session. Time noted 2:55 p.m.



A MOTION was made by Robert Lopez, SECONDED by Bill Curry to table action on Item No. 2 under County Manager's report to give legal counsel time to review newly presented documents from Barry Freedman. Action on the item will be made prior to the adjournment of the meeting. MOTION carried with all members voting "aye".

3. Presented the monthly RPHCA Report for September from the Quay County Family Health Center. A copy is attached and made a part of these minutes.
4. Provided information regarding the DWI Grant Council special allocations for distribution funding. Quay County should receive an additional \$15,273.00. A Grant Agreement is forthcoming.
5. Provided information regarding the Federal Health Care Reform on Thursday, October 14, 2010 from 7:00 p.m. to 9:00 p.m. at Mesalands Community College.
6. The Auditor is present and the yearly audit is on track.
7. Coordination efforts are being made between the Quay County Health Clinic and the County Courthouse to make flu shots available to the employees. Details will be available at the end of the week.
8. HDR Engineers conducted a structural assessment of the County Courthouse and said the structure is sound and just needs some cosmetic cement work to repair some cracking.
9. A telephone conference call is scheduled, Wednesday, October 13 regarding the contract with the Ute Water Commission and the Interstate Stream Commission.
10. The Ute Reservoir Water Commission will meet on October 21, 2010 in Portales at 1:30 p.m.

CHECKS WERE REVIEWED AND APPROVED:  
UNDER OTHER BUSINESS:

A MOTION was made by Bill Curry, SECONDED by Robert Lopez, to go into Executive Session pursuant to the Open Meetings Act 10-15-1(H) 7 NMSA to discuss threatened or pending litigation. MOTION carried with Lopez voting "aye"; Curry voting "aye" and McCasland voting "aye". Time noted 3:00 p.m.

-----EXECUTIVE SESSION-----

Return to regular session. Time noted 3:35 p.m.

A MOTION was made by Bill Curry, SECONDED by Robert Lopez that only the items listed above were discussed during Executive Session and no action was taken. MOTION carried with Lopez voting "aye"; Curry voting "aye" and McCasland voting "aye".

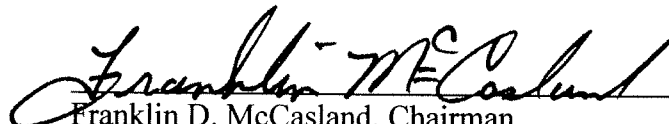
A MOTION was made by Robert Lopez, SECONDED by Bill Curry to return to the tabled action earlier in the meeting. (Ute Lake Ranch Filing No. 1) MOTION carried with all members voting "aye".

A MOTION was made by Commissioner Curry, SECONDED by Robert Lopez, under the guidance of the Quay County Subdivision Ordinance, Section 11.3.2, to suspend the approval of Ute Lake Ranch Subdivision Plat, Filing No. 1, of all unsold, unleased or otherwise not conveyed portions of Ute Lake Ranch, Filing No. 1; and further, that the suspension not be lifted until Ute Lake Ranch has filed an updated Disclosure Statement which has been approved by the Board of County Commissioners along with a plan showing how Ute Lake Ranch plans to

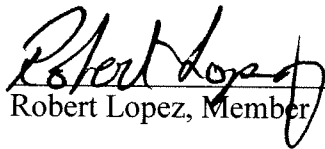
provide potable water and telephone service to each and every lot within Ute Lake Ranch Filing No. 1; and that the County Commission not approve such a plan unless ULR demonstrates the ability to finance such plan without any additional cost to the landowners and meet a reasonable construction time frame and schedule of compliance as may be approved by the Board of County Commissioners. MOTION carried with all members voting "aye". An Affidavit of Suspension will be recorded in the Quay County Clerk's Office in the real estate records.

There being no further business, a MOTION was made by Bill Curry, SECONDED by Robert Lopez to adjourn the regular meeting of the Board of Quay County Commissioners until the next regular meeting set for Monday, October 25, 2010 unless sooner called. MOTION carried with all members voting "aye". Time noted 3:45 p.m.

BOARD OF QUAY COUNTY COMMISSIONERS

  
Franklin D. McCasland, Chairman

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Bill Curry, Member

  
Robert Lopez, Member

ATTEST:

  
Ellen L. White, County Clerk